

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 1:03-CR-194

KEVIN KARL SMITH,

HON. ROBERT HOLMES BELL

Defendant.

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**OPINION AND ORDER DENYING SUBPOENAS**

This matter comes to the Court pursuant to a Sixth Circuit Court of Appeals opinion and remand entered July 31, 2006. This authored opinion, following a jury trial, conviction, and sentencing in this Court, addressed the appeal of both the trial issues resulting in the conviction and the lawfulness and reasonableness of the sentence. In short, the conviction was affirmed while the sentence was vacated with a remand for resentencing, "under the now-advisory Sentencing Guidelines."

IT APPEARS in Defense Counsel's Sentencing Memorandum (docket #105) and Motion for Downward Departure and Mitigation (docket #103) that Defendant moved for a downward departure and a mitigation of his punishment, "on the grounds of imperfect entrapment..." It appears however, that the Court of Appeals' opinion, commencing on page 4, addressed this issue and concludes that, "the evidence supports the jury verdict that Smith was not induced to commit this crime and was predisposed to do so."

ACCORDINGLY, the conviction having been affirmed by the Sixth Circuit Court of Appeals, subpoenas will not be authorized nor will evidence be received on defense issues of culpability or responsibility. The sole issue on remand will be a review of the Guidelines in conjunction with the review of the 18 U.S.C. § 3553(a) statutory factors of a sufficient and reasonable sentence.

Date: December 18, 2006 /s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
CHIEF UNITED STATES DISTRICT JUDGE